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9 in her official capacity as Secretary of State for the State of Arizona

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF ARIZONA

12 League of Women Voters of Arizona; Mi  
13 Familia Vota Education Fund; and Promise  
14 Arizona, on behalf of themselves, their  
15 members, and all others similarly situated,

16 Plaintiffs,

17 v.

18 Michele Reagan, in her official capacity as  
19 Secretary of State for the State of Arizona,

20 Defendant.

No. CV-18-2620-JAT

**DEFENDANT'S ANSWER TO  
PLAINTIFFS' COMPLAINT**

21 Defendant Michele Reagan in her official capacity as Secretary of State for the  
22 State of Arizona ("Defendant"), by and through undersigned counsel, and for her Answer  
23 and Affirmative Defenses to Plaintiffs' League of Women Voters of Arizona (the  
24 "League"), Mi Familia Vota Education Fund ("Mi Familia Vota") and Promise Arizona  
25 ("collectively "Plaintiffs") Complaint, admits, denies, and states as follows:

26 1. In response to the Opening Paragraph of the Complaint, 1:17-2:6,  
Defendant specifically denies that Plaintiffs seek any declaratory or injunctive relief that  
will actually remedy any alleged violations of Section 5 of the National Voter  
Registration Act ("NVRA"). Defendant further denies that she is failing to update all

1 voter registration addresses of persons who update their addresses with the Arizona  
2 Department of Transportation ("ADOT") through ADOT's Motor Vehicle Division  
3 ("MVD"). Defendant further denies that any citizen is being deprived of the opportunity  
4 to vote in federal elections. Defendant denies all remaining allegations in the Opening  
5 Paragraph.

6 **JURISDICTION AND VENUE**

7 2. Defendant admits the allegations in Paragraphs 1 through 5.

8 **PLAINTIFFS**

9 **LEAGUE OF WOMEN VOTERS OF ARIZONA**

10 3. Defendant is without sufficient information to form a belief as to the  
11 allegations in Paragraph 6.

12 4. Defendant is without sufficient information to form a belief as to the  
13 allegations in Paragraph 7, except she denies that the League has any member that has  
14 suffered harm by the alleged actions of the state. Defendant further denies that any  
15 League members are at risk of being harmed in the future by any of the processes alleged  
16 to violate NVRA.

17 5. Defendant is without sufficient information to form a belief as to the  
18 allegations in Paragraphs 8 through 11.

19 **MI FAMILIA VOTA**

20 6. Defendant is without sufficient information to form a belief as to the  
21 allegations in Paragraph 12.

22 7. Defendant is without sufficient information to form a belief as to the  
23 allegations in Paragraph 13, except she denies that Mi Familia Vota has any member that  
24 has suffered harm by the Defendant's alleged actions. Defendant also specifically denies  
25 that any Mi Familia Vota members are at risk of being harmed in the future by any  
26 alleged actions by Defendant.

1           8. Defendant is without sufficient information to form a belief as to the  
2 allegations in Paragraphs 14 through 16.

3                                   **PROMISE ARIZONA**

4           9. Defendant is without sufficient information to form a belief as to the  
5 allegations in Paragraph 17.

6           10. Defendant is without sufficient information to form a belief to the  
7 allegations in Paragraph 18, except she denies that Promise Arizona has any member that  
8 has suffered harm by the Defendant's alleged actions. Defendant also specifically denies  
9 that any Promise Arizona members are at risk of being harmed in the future by any  
10 alleged actions by Defendant.

11           11. Defendant is without sufficient information to form a belief to the  
12 allegations in Paragraphs 19 through 21.

13                                   **DEFENDANT**

14           12. In response to Paragraph 22, Defendant admits that she is the Secretary of  
15 State for the State of Arizona and the chief election officer of Arizona. Defendant admits  
16 she is responsible for coordinating the State's responsibilities under the NVRA pursuant  
17 to A.R.S. §16-142. Defendant admits that Plaintiffs have brought this action against her  
18 in her official capacity as the Secretary of State. Defendant denies all remaining  
19 allegations in Paragraph 22.

20                                   **FACTUAL ALLEGATIONS**

21           **THE NVRA REQUIRES THE SECRETARY OF STATE TO PROVIDE VOTER**  
22           **REGISTRATION AND ADDRESS UPDATES TO ADOT/MVD CLIENTS**

23           13. In response to Paragraphs 23, Defendant states that the paragraph does not  
24 require a response. To the extent a response is required, Defendant specifically denies  
25 any allegation to the extent it implies something not contained within the statutes.  
26

1           14. Defendant admits the general allegation in paragraph 24, but cannot  
2 confirm the use of the term “Covered Transactions”.

3           15. Defendant denies the allegations in Paragraph 25 as it does not adequately  
4 reflect the law.

5           16. Defendant denies the allegations in Paragraph 26 as the allegations are  
6 incomplete and do not correctly state the law.

7           17. Defendant denies the allegations in Paragraph 27 as the allegations are  
8 incomplete and do not correctly state the law.

9           18. Defendant cannot precisely determine what “requirements” paragraph 28  
10 refers to and therefore denies the allegation contained therein.

11           19. Defendant is without sufficient information to form a belief as to the  
12 allegations in Paragraph 29.

13           20. In response to Paragraph 30, Defendant admits that voters are required to  
14 vote in the polling location for their address pursuant to Arizona law. Defendant denies  
15 the remaining allegations in Paragraph 30.

16           21. In response to Paragraph 31, Defendant admits that a voter who casts a  
17 ballot at a polling place not associated with their current address will not have their vote  
18 counted. Defendant denies the remaining allegations in Paragraph 31 including any claim  
19 that anyone is being disenfranchised.

20           22. Defendant denies the allegations contained in Paragraph 32 and 33.

21           **THE SECRETARY OF STATE’S CHANGE OF ADDRESS PROCEDURES**  
22           **VIOLATE SECTIONS 5 OF THE NVRA**

23           23. Defendant denies the allegations in Paragraph 34.

24           24. Defendant believes the allegation contained in Paragraph 35 is correct.

25           25. Defendant admits the allegations in Paragraphs 36 and 37.

1           26. In response to Paragraph 38, Defendant admits she is Arizona's chief  
2 election officer. Defendant denies the remaining allegations in Paragraph 38. The form  
3 referenced is no longer in use.

4           27. In response to Paragraph 39, Defendant admits that an individual applying  
5 in-person for a new driver's license or identification card must complete the Driver  
6 License/Identification Card Application. Defendant further admits that if an applicant  
7 checks the "yes" box in response to the question relating to whether the applicant wishes  
8 to register to vote or update an existing voter registration, the applicant's voter  
9 registration address will be updated. However, pursuant to ADOT policy an applicant is  
10 not permitted to complete ADOT form 40-5122 without selecting either "yes" or "no" in  
11 relation to the above-mentioned question. Accordingly, every applicant either has their  
12 address updated or the applicant has chosen to "opt-out" of the updated address change.  
13 Defendant denies all remaining allegations in Paragraph 39.

14           28. In response to Paragraph 40, Defendant denies that, in some ADOT/MVD  
15 offices, an individual who already possesses a driver's license or identification card and  
16 wishes to report a change of address in-person may do so by completing a  
17 Duplicate/Credential Update Application (ADOT form 40-5145). Defendant understands  
18 that that form is no longer in use. Generally one is not given a form at all if they appear  
19 at the MVD office and only want an address change. In that circumstance, the person is  
20 directed to a Kiosk to make the change on line. But they may be given the Driver's  
21 license/Identification Card Application. Defendant denies all remaining allegations in  
22 Paragraph 40.

23           29. In response to Paragraph 41, Defendant admits that, upon information and  
24 belief, when an individual submits an updated address through ADOT/MVD's Service  
25 Arizona website that update will be reflected in the driver's license/state identification  
26 card record. Defendant affirmatively states that if the individual completes the online

1 transaction relating to using the updated address to update their voter registration address,  
2 the individual's voter registration address will indeed be updated. Defendant denies all  
3 remaining allegations in Paragraph 41.

4 30. In response to Paragraph 42, Defendant admits that the online address  
5 update form provides a hyperlink for an individual to update their voter registration  
6 address. Defendant denies that the individual must complete an entirely new voter  
7 registration form because the form automatically populates the retained information of  
8 the individual from the change-of-address transaction to the voter registration form.  
9 Defendant admits that the addresses of those individuals who do not click the link and  
10 complete the new voter registration form do not have their voter registration address  
11 updated.

12 31. Defendant denies the allegations in Paragraphs 43 through 45.

13 **THE SECRETARY OF STATE'S FAILURE TO FOLLOW SECTION 5 OF THE**  
14 **NVRA HARMS PLAINTIFFS**

15 32. Defendant denies the allegations in Paragraphs 46 through 53.

16 33. Defendant is without sufficient information to form a belief as to the  
17 allegations in Paragraph 54 and 55.

18 34. Defendant denies the allegations in Paragraph 56.

19 **THE SECRETARY OF STATE HAS FAILED TO CORRECT ONGOING NVRA**  
20 **VIOLATIONS**

21 35. In response to Paragraph 57, Defendant admits that Plaintiffs have  
22 excerpted portions of federal law, but those provisions are not complete.

23 36. Upon information and belief, Defendant admits the allegations in  
24 Paragraphs 58 and 59.

25 37. In response to Paragraph 60, Defendant admits that Plaintiffs and  
26 ADOT/MVD entered into an Interim Memorandum of Understanding. Defendant further

1 admits that the changes requested by Plaintiffs are unlikely to be completed before the  
2 2018 general election. Defendant denies all remaining allegations in Paragraph 60.

3 38. In response to Paragraph 61, Defendant admits that all changes requested  
4 by Plaintiffs in the November Letter have not yet been cured.

5 39. Defendant denies the allegations in Paragraphs 62 through 64.

### 6 **FIRST CAUSE OF ACTION**

#### 7 **Violation of Section 5 of the National Voter Registration Act of 1993**

8 40. In response to Paragraph 65, Defendant incorporates by reference her  
9 responses to all prior allegations as if set forth fully herein.

10 41. Defendant denies the allegations in Paragraphs 66 through 68.

### 11 **BASIS FOR INJUNCTIVE RELIEF**

12 42. In response to Paragraph 69, Defendant incorporates by reference her  
13 responses to all prior allegations as if set forth fully herein.

14 43. Defendant denies the allegations in Paragraphs 70 through 76.

### 15 **AFFIRMATIVE DEFENSES**

16 In further response to Plaintiffs' Complaint, Defendant sets forth the following  
17 affirmative defenses:

18 1. The damages alleged by Plaintiffs may have been the result of other  
19 superseding and/or intervening cause(s), and were not proximately caused by Defendant.  
20 This will be further investigated through discovery.

21 2. Defendant affirmatively states that Plaintiffs have not incurred an injury in  
22 fact that is fairly traceable to the challenged conduct of the Defendant that is likely to be  
23 redressed by a favorable judicial decision, and Plaintiffs do not, therefore, have standing  
24 to bring the instant claims.

3. Defendant affirmatively states that the Complaint, and each cause of action alleged therein against Defendant are barred by doctrines of estoppel, waiver, unclean hands, and other equitable doctrines. Plaintiffs seek an equitable remedy in this case, and as such, it is incumbent that they do equity. Upon information and belief, Plaintiffs' equitable claims are barred by their own action, or inaction, and their own conduct, and the conduct of the class of voters they claim to represent.

4. Defendant affirmatively states that any actual damages incurred by Plaintiffs arose as a result of Plaintiffs' failure to mitigate.

5. Defendant affirmatively asserts the defenses of impossibility and laches.

6. Defendant affirmatively states that Plaintiffs have failed to join indispensable necessary and proper parties to this matter.

7. Defendant reserves the right to assert additional, separate and alternative defenses as discovery warrants.

WHEREFORE, Defendant requests that the Court enter judgment in her favor and dismiss this matter in its entirety with prejudice and award her any attorneys' fees and costs to which she may be entitled.

DATED this 11<sup>th</sup> day of September, 2018.

HINSHAW & CULBERTSON LLP

/s/ Stephen W. Tully  
Stephen W. Tully  
Bradley L. Dunn  
Attorneys for Defendant Michele Reagan,  
in her official capacity as Secretary of  
State for the State of Arizona

1 **CERTIFICATE OF SERVICE**

2 I certify that on the 11<sup>th</sup> day of September, 2018, I electronically transmitted the  
3 attached document to the Clerk's Office using the CM/ECF System for filing and  
transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

4 Lawrence G. Scarborough, Esq. Arusha Gordon  
5 Jessica R. Maziarz, Esq. Ezra D. Rosenberg  
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